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10/804,924	03/19/2004	Frederick W. Romig	030021-00020	8221

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EXAMINER

BARTOSIK, ANTHONY N

ART UNIT	PAPER NUMBER
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3635

MAIL DATE	DELIVERY MODE
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10/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/804,924	Applicant(s) ROMIG, FREDERICK W.	
	Examiner ANTHONY N. BARTOSIK	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/03/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

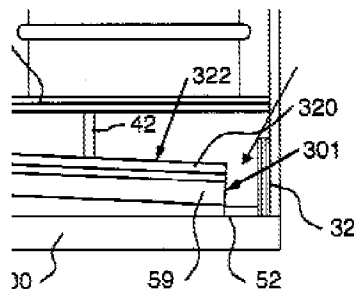
DETAILED ACTION

This is a Final Rejection on the merits in response to Applicant's Amendments/Req. for Reconsideration of July 3, 2008.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. **Claims 1-4, 7-9, 11-17, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Romig (US 6,305,131 B1) in view of Westin et al. (US 4,122,716) and White (US 5,005,227).**
3. In Re claim 1, Figures 1-4 and Column 2 Lines 50-67 of Romig teaches an upper floor (20) having openings therethrough; a lower floor (50) that is sloped from an upper end to an elongated basin. Col. 3 Lines 54-56 teach, suggest, or motivate one to include vents within a hazardous storage building for safety purposes. Romig does not, however, disclose the vents utilizing a duct, vent openings, and a means for removing air.

Modified Fig. 2 of Romig



Figures 1 and 2 as well as Column 2 of Westin et al. teach at least one vent duct (19 & 22) adjacent to a lower floor basin (8), the vent duct (19 & 22) including vent openings structured to allow air and fumes to be introduced into the vent duct (19 & 22); and means for removing the air (20) and fumes in the vent duct (19 & 22) therefrom. Westin et al. teaches the use of the aforementioned structure in a hazardous storage facility for removing toxic fumes.

Westin et al. does not disclose the vent duct disposed beneath the upper floor, however, it is well known to include vent ducts below an upper surface to which they are attached. Figure 3 of White teaches that it is well known to disclose a vent duct (22) below an upper surface for ventilating toxic gases. Furthermore, one skill in the art would recognize that disposing the vent duct below an upper surface would result in a more effective duct system for ventilating. The increased ventilation would be due to the fact that the duct would be projecting farther into the area containing the toxic fumes that were sought to be ventilated. This would be necessary, since most toxic fumes are denser than air and tend to collect at the lowest point in which they are contained. Placing the vent duct as claimed is nothing more than the use of known teachings to improve similar devices in the same way.

It therefore, would have been obvious to one skilled in the art at the time of the invention to modify the hazardous material storage facility of Romig by including a vent duct system such as one taught by Westin et al. for venting a hazardous materials storage facility and thereby extending a vent duct below the upper floor as taught by White.

4. In Re claim 2, Figures 1 and 2 as well as Column 2 of Westin et al. disclose a means for removing the air and fumes that includes at least one exhaust fan (20).

5. In Re claim 3, Figures 1-8 and Column 3 Lines 30-31 of Romig disclose an elongated basin including a channel (52) disposed at the bottom of the basin.

6. In Re claim 4, Figures 1-8 and Column 3 Lines 30-34 of Romig disclose a channel (52) that is sloped in a direction generally perpendicular to the direction of the lower floor (50) slope.

7. In Re claim 7, the above combination teaches disposing at least one vent duct above said channel.

8. In Re claim 8, modified Romig teaches vent openings (Column 2 Lines 38-40 of Westin et al.) that are disposed on the bottom of the vent duct and the above combination teaches the vent duct facing the channel.

9. In Re claim 9, the above combination teaches vent openings , but not specifically the lateral sides. Since Applicant has provided no criticality or unexpected results for placing the vents on the side, one of ordinary skill in the art at the time of the invention

Art Unit: 3635

would have found it “obvious to try” placing the vents on the side as a finite number of identified, predictable solutions, with a reasonable expectation of success.

10. In Re claim 11, Figures 3A, 3B, 6, and 8B of Romig discloses a lower floor (50) including a sloped floor with two portions, a first sloped portion and a second sloped portion wherein said first and second sloped portions are sloped towards each other whereby said basin is at the vertex of the lower floors (50).

11. In Re claim 12, Figure 6 of Romig discloses an elongated basin including a channel (52) disposed at the bottom of the basin.

12. In Re claim 13, Figure 6 and Col. 4 Lines 1-7 of Romig disclose a channel (52) that is sloped in a direction generally perpendicular to the direction of the slope of the lower floor (50).

13. In Re claim 14, the combination of Romig, Westin et al., and White teach placing at least one vent duct above a channel. Furthermore, placing a vent above a channel is known in the art (Westin et al.) and adding the variation of two floor portions feeding one channel would do nothing more than yield a predictable result.

14. In Re claim 15, the combination as stated in claim 14 teaches the claimed invention except for two vent ducts. A design engineer, faced with ventilating a

Art Unit: 3635

hazardous storage facility would have found it obvious to include a second vent duct to properly ventilate the structure. It therefore would have been obvious to one skilled in the art at the time of the invention to include a second vent duct yielding the predictable result of a better ventilated facility.

Furthermore, it would have been obvious to one skilled in the art at the time of the invention to include a second vent duct, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. MPEP 2144.04.

15. In Re claim 16, the combination of Romig, Westin et al., and White teach at least one vent duct disposed below said lower floor and above the bottom of said channel, said vent openings extending between said at least one vent duct and said channel.

16. In Re claim 17, the combination as stated in claim 14 renders obvious the claimed invention except for two vent ducts. A design engineer, faced with ventilating a hazardous storage facility of sufficient size would have found it obvious to include a second vent duct to properly ventilate the structure. It therefore would have been obvious to one skilled in the art at the time of the invention to include a second vent duct to better ventilate the facility.

Furthermore, it would have been obvious to one skilled in the art at the time of the invention to include a second vent duct, since it has been held that mere duplication

Art Unit: 3635

of essential working parts of a device involves only routine skill in the art. MPEP 2144.04.

17. In Re claim 22, the combination of Romig, Westin et al., and White renders obvious the limitations of the claim. The Examiner notes that a duct such as one taught by Westin et al. is elongated and has a longitudinal axis and that axis is parallel to the corresponding longitudinal axis of the basin of Romig.

18. In Re claim 23, the combination of Romig, Westin et al., and White teach the limitations of the claim. The Examiner notes that the channel such as the one taught by Romig has a longitudinal axis and placing that axis parallel to the corresponding longitudinal axis of a vent duct such as the one taught in Westin et al would have been obvious from the above combination.

19. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Romig (US 6,305,131 B1), Westin et al. (US 4,122,716), and White (US 5,005,227) as applied to claims 1-4 above, and further in view of Heintzelman et al. (US 5,030,033).

20. In Re claim 5, the combination of Romig, Westin et al., and White have been discussed above and teach at least one exhaust fan but fail to teach at least one vapor sensor disposed adjacent to it. Column 10 Lines 37-45 of Heintzelman et al. teach the

Art Unit: 3635

use of a vapor sensor for detecting toxic vapors. One skilled in the art would find it obvious to monitor vapors in a hazardous material storage structure, and that in order to monitor the amount of vapors being ventilated, a vapor sensor would need to be placed adjacent to the fan.

It therefore would have been obvious to one skilled in the art at the time of the invention to modify the combination of Romig, Westin et al., and White by including a vapor sensor such as one taught in Heintzelman et al. and placing that vapor sensor adjacent the exhaust fan in order to detect toxic fumes.

21. In Re claim 6, Figures 1 and Column 3 Lines 47-61 of Romig teaches a spill detection system (70) structured to cooperate with a sensor (60), but not specifically a vapor sensor. Column 10 Lines 37-41 of Heintzelman et al. teaches the use of a vapor sensor for detection of leaks. Utilizing the suggestion of Heintzelman et al., one skilled in the art would find it obvious to use a vapor sensor as one of the sensors of Romig for detecting spills. Therefore, it would have been obvious to one skilled in the art at the time of the invention to include a vapor sensor as taught by Heintzelman et al. in such a way as to cooperate with the spill detection system of Romig to detect leaks.

22. **Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Romig (US 6,305,131 B1), Westin et al. (US 4,122,716), and White (US 5,005,227) as applied to claim 1-3 and 7 above, and further in view of Hawkins et al. (US 5,597,392).**

23. In Re claim 10, Westin et al. teaches a vent duct, but the vent duct lacks a gate means. It is well known in the art that providing a gate means on a vent duct is an inexpensive means to regulate flow, as opposed to using a variable speed fan.

Hawkins et al. teaches a gate means (18) structured to selectively open and cover the vent openings. Appreciating a gate means as an inexpensive method to regulate flow, it would have been obvious to one skilled in the art at the time of the invention to modify the vent duct of Westin et al. by including a gate means as taught by Hawkins et al.

24. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Romig (US 6,305,131 B1), Westin et al. (US 4,122,716), and White (US 5,005,227) as applied to claims 1-3 above, and further in view of Rieger (US 4,909,227).

25. In Re claim 19, the combination of Romig and Westin teach the claimed invention, including the vent openings and a duct extending above said upper floor, however, it lacks the teaching of an inner and outer duct system.

Col. 2 Lines 69-68 of Rieger teach the use of an inner duct to remove gas and an outer duct to introduce fresh air. Using the teaching of an inner and outer duct system for removing gas and introducing fresh air as taught by Rieger, it would have been obvious to one skilled in the art at the time of the invention to modify the duct system of the combination to include an inner duct and outer duct in order to remove the gas

Art Unit: 3635

inside the storage facility and introduce fresh air. Additionally, this would also equalize the pressure in the building. Such a combination would be obvious and well known as applying a known technique to a known device ready for improvement to yield a predictable result.

26. In Re claim 20, the above combination teaches at least one vent duct that is disposed above a channel.

27. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Romig (US 6,305,131 B1), Westin et al. (US 4,122,716), White (US 5,005,227), and Hawkins et al. (US 5,597,392) as applied to claim 19 above, and further in view of Heintzelman et al. (US 5,030,033).

28. In Re claim 21, the combination teaches the claimed invention except for the use of vapor sensors and the location of the vapor sensors. Column 10 Lines 37-43 of Heintzelman et al. teaches the use of a vapor sensor in connection with a hazardous storage facility to detect leakage in the facility. Using the teachings of Heintzelman et al. it would have been obvious to one skilled in the art at the time of the invention to modify the combination to include vapor sensors anywhere within the storage facility, and within the inner and outer duct to detect vapors from a leak. Such a placement would be "obvious to try," as a finite number of identified, predictable solutions, with a reasonable expectation of success. Furthermore, the Examiner notes that it would also

be obvious to include the sensors in the inner and outer duct to measure the difference between the incoming air and out going air.

Response to Arguments

29. Applicant's arguments filed July 3, 2008 have been fully considered but they are not persuasive.

30. ***Applicant argues*** that Westin does not disclose a "duct." The Examiner disagrees, and in taking the broadest reasonable interpretation has considered references numerals 19 & 22 of *Westin* to be a duct.

31. ***Applicant argues*** that they can be their own lexicographers. The Examiner is in agreement that the applicant is entitled to be their own lexicographers; however, in doing so they must set out specific definitions if there terms are to be limited within the claims. The Applicant appears to be imparting limitations from the disclosure that do not exist within the claims. Note, page 8 regarding the discussion to a "chimney." The limitation of a chimney is not found anywhere within the claims. Additionally, Applicant's remarks regarding the channel on page 9 discusses limitations within the specification not found within the claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Art Unit: 3635

32. **Applicant argues** that *White* is non-analogous and not pertinent to the particular problem. It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the field of endeavor is removing harmful fumes from an enclosed space. *Both, Westin* and *White* are within that same field, making them analogous art. Furthermore, they are both pertinent to Applicant's particular problem, i.e. providing for a means of removing toxic fumes, adding additional support as being analogous art.

33. **Applicant argues** that claim 1 has not been properly rejected through the proposed combination and that the art cannot be combined as suggested. In paragraph 3 of the rejection the Examiner clearly set forth the articulated reasoning with a rational underpinning to support the rejection. The Applicant is reminded that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Art Unit: 3635

34. **Applicant argues** that the combination does not disclose a basin that includes a channel. The Examiner notes that as Figure 2 of the present application, which includes a channel and basin, is the same as Figure 2 in *Romig*, thereby the prior art and the combination that results include a channel and basin.

35. **Applicant's arguments** directed to claims 15, 16, 17, 22, and 23 are improper. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The combination as a whole renders the claimed limitations obvious.

36. **Applicant argues** that the combination of *Romig*, *Westin*, and *White* cannot be combined with *Heintzelman* since *Heintzelman* discloses a sealed assembly. The Examiner disagrees as Applicant provides no reasoning as to why a vapor sensor could not be employed and function with a vented system. In response to Applicant's argument that *Heintzelman* is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, *Heintzelman* is in the same field of Applicant's endeavor, the storage of toxic materials.

37. ***Applicant argues*** that the combination rejecting claims 19 and 20 cannot be made. The Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teaching of *Rieger* discloses what is well known in the art and that one of ordinary skill in the art would have found it obvious to make the claimed combination.

38. Applicant argues that the rejection to claim 21 was improper. The Examiner is not persuaded by Applicant's arguments, and relies on the reasoning set forth in the rejection to claim 21.

Allowable Subject Matter

39. Claim 18 is allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY N. BARTOSIK whose telephone number is (571)270-3112. The examiner can normally be reached on M-F 7:30-5:00; E.D.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3635

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/Richard E. Chilcot, Jr./
Supervisory Patent Examiner, Art Unit 3635

Anthony Bartosik
Examiner
Art Unit 3635
